

PT 04-3

Tax Type: Property Tax

Issue: Educational Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**ILLINOIS BETA HOUSE
FUND CORPORATION,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 01-PT-0089
(00-16-2482)
P.I.N: 20-14-116-006**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Messrs. Anders C. Wick and Craig C. Martin of Jenner & Block, LLC on behalf of the Illinois Beta House Fund Corporation (the "applicant" or the "House Fund"); Mr. Michael Abramovic, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the "Department").

SYNOPSIS: This proceeding raises the issue of whether real estate identified by Cook County Permanent Index Number 20-14-116-006 (the "subject property") qualifies for exemption from 2000 real estate taxes under 35 ILCS 200/15-35. The underlying controversy arises as follows:

Applicant filed a real estate exemption complaint with the Cook County Board of Review (the "Board") on June 4, 2001. Stipulation Group Ex. No. 1, Doc. A. The Board reviewed applicant's complaint and recommended that the requested exemption be denied. Stipulation Group Ex. No. 1, Doc. B. On October 12, 2001, the Department issued its initial determination in this matter, which denied the

requested exemption on grounds that the subject property is not in exempt ownership and not in exempt use.

Applicant filed an appeal to this denial and later filed a motion for summary judgment. On April 24, 2003, I issued an Order denying applicant's motion for summary judgment on grounds that there existed at least one issue of material issue of fact, which rendered it legally inappropriate to grant summary judgment under 735 ILCS 5/2-1005(c).

Applicant and the Department subsequently entered into and filed a "Second Joint Stipulation," (the "Stipulation") wherein they expressly: (a) waived their rights to an evidentiary hearing; and, (b) agreed that the exhibits attached to the Stipulation "shall constitute the entirety of the factual record before the Department." Stipulation ¶2. Following a careful review of the Stipulation and its supporting documentation, I recommend that the Department's initial determination in this matter be affirmed.

FINDINGS OF FACT:

A. PRELIMINARY MATTERS

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Stipulation Group Ex. No. 1, Docs. A, B and C.
2. The Department's position in this matter is that the subject property is not in exempt ownership and not in exempt use. Stipulation Group Ex. No. 1, Doc. C.

3. The sole applicant in this matter is the Illinois Beta House Fund Corporation, an Illinois not-for-profit corporation. Stipulation Group Ex. No. 1, Doc. B.
4. The Illinois Beta Chapter of the Phi Delta Theta Fraternity (the “Chapter”) is an unincorporated association of individuals affiliated with the Phi Delta Theta Fraternity (the “Fraternity”), a corporation organized under the laws of the State of Ohio.¹ Stipulation ¶25.
5. The Fraternity is exempt from federal income tax under Section 501(a) of the Internal Revenue Code, as an organization described in Section 501(c)(7) thereof.² *Id.*
6. The Fraternity maintains affiliated chapters at 165 campuses in the United States and Canada. Each chapter, including the one at the University of Chicago, is associated with a college or university, and no chapter exists without such an association. Stipulation ¶26.

1. Neither the Fraternity’s Articles of Incorporation nor its by-laws were included within the exhibits that applicant and the Department submitted in support of the Stipulation.

2. Sections 501(a) and 501(c)(7) of the Internal Revenue Code state as follows:

§ 501. Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation.--An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(c) List of exempt organizations.--The following organizations are referred to in subsection (a):

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

26 U.S.C.A. §§ 501(a), 501(c)(7).

B. APPLICANT'S ORGANIZATIONAL AND FINANCIAL STRUCTURES

7. Applicant was originally incorporated as the "Illinois Beta House Fund" on May 14, 1907. Stipulation Ex. No. 4; Stipulation ¶8.
8. "The Illinois Beta House Fund" was a title holding corporation. Stipulation Ex. No. 3.
9. The functions of the "Illinois Beta House Fund" were merged into those of the applicant, the "Illinois Beta House Fund Corporation," when the applicant was incorporated under the General Not For Profit Corporation Act of Illinois on July 17, 2000. Stipulation Ex. Nos. 3, 4.
10. Applicant filed Articles of Incorporation with the Illinois Secretary of State on July 17, 2000 which:
 - A. Describe its general corporate purposes as being "charitable, benevolent, eleemosynary, educational and social[;]"
 - B. State that the corporation will: (i) promote and foster the social and fraternal principles of Phi Delta Theta Fraternity at the University of Chicago[;]" and, (ii) "engage in other pleasure, recreation, and nonprofitable activities which qualify as such under the meaning of Section 501(c)(7) of the Internal Revenue Code of 1986, as amended ...[;]" and,
 - C. Specifically provide that "membership in the corporation shall be restricted to members of [the] Phi Delta Theta Fraternity who have

joined the fraternity through initiation at [the] Illinois Beta chapter at the University of Chicago.”

Stipulation Ex. No. 3.

11. Applicant’s by-laws state, in relevant part, that:

The principal object for which this Corporation is formed is to maintain a Chapter House in the City of Chicago, Illinois for beneficent, charitable, and educational purposes for students attending The University of Chicago (or other similar institutions of learning) in conjunction with studies commenced or pursued at the University of Chicago, who may or may not become members of the Phi Delta Theta Fraternity, at actual cost to those able to pay for same or at no cost to those unable to pay in coordination with such scholarship and other financial assistance as may be arranged...[.]

Stipulation, ¶10.

12. Applicant’s by-laws further state, *inter alia*, that the activities of the corporation shall include:

- A. Representing all members of the Chapter, before all who may have business and concerned with it; and,
- B. Owning, supervising, acquiring and disposing of real property in the State of Illinois in and for purposes of the Chapter; and,
- C. Fostering united action and promoting unbroken concourse of all members of the Chapter for the benefit and improvement of said Chapter, of the General Fraternity, of The University of Chicago, and the community at large.

Id.

13. Applicant is exempt from federal income tax under Section 501(a) of the Internal Revenue Code, as an organization described in Section 501(c)(7) thereof, pursuant to a determination issued by the Internal Revenue Service on November 30, 2001. Stipulation Ex. No. 2.
14. Applicant's Return of Organization Exempt From Income Tax (IRS form "990") reveals the following information about applicant's sources of revenue for the period July 1, 2000 through June 30, 2001:

SOURCE	AMOUNT	% OF TOTAL³
Cash Contributions		
Maintenance & Repair of the Subject Property	\$ 4,585.00	<1%
Promotion of the Social & Fraternal Principles Of the Phi Delta Theta Fraternity	\$ 17,859.00	2%
Total Cash Contributions	\$ 22,444.00	3%
Insurance Reimbursement	\$ 3,649.00	1%
Building Contribution	\$ 700,000.00	96%
Interest on Savings & Temporary Cash Investments	\$ 26.00	<1%
Dividends & Interest from Securities	\$ 103.00	<1%
TOTAL REVENUES	\$ 726,222.00	100%

Applicant Motion Ex. No. 3.

3. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues or expenses shown on the relevant line of the second column. Thus, \$4,585.00/\$726,222.00 = .0063 (rounded four places past the decimal) or <1%.

15. According to the 990, the line item for building contribution represents “\$700,000.00 of contribution of building and land” that applicant received from its predecessor in interest, the Illinois Beta House Fund. Stipulation Ex. No. 3.
16. The \$700,000.00 contribution is, per the 990, treated as non-exempt function income set aside for purposes of the deduction for charitable contributions allowed under Section 170(c)(4) of the Internal Revenue Code. *Id.*
17. The 990 also indicates the following information about applicant’s expenses for the period July 1, 2000 through June 30, 2001 :

SOURCE	AMOUNT	% OF TOTAL	
Program Services			
Maintenance and Other Upkeep of the Subject Property			
Interest	\$ 1,790.00	6%	11%
Depreciation, Depletion, Etc.	\$ 12,308.00	40%	74%
Repairs and Maintenance	\$ 2,324.00	8%	14%
Total Maintenance and Other Upkeep Program Expenses	\$ 16,422.00	53%	99%
Alumni Awards	\$ 200.00	1%	1%
Total Program Services	\$ 16,622.00	54%	100%
Management & General			
Accounting Fees	\$ 250.00	1%	2%

Legal Fees	\$ 141.00	1%	1%
Equipment & Maintenance	\$ 18.00	<1%%	<1%
Depreciation, Depletion, Etc.	\$ 12,308.00	40%	86%
Administrative Expenses	\$ 768.00	2%	5%
Bank Fees & Charges	\$ 150.00	<1%	1%
Dues & Subscriptions	\$ 22.00	<1%	<1%
Licenses & Permits	\$ 5.00	<1%	<1%
Consulting Expenses	\$ 93.00	<1%	1%
Miscellaneous	\$ 266.00	1%	2%
Equipment	\$ 222.00	1%	2%
Total Management & General	\$ 14,243.00	46%	100%
TOTAL EXPENSES	\$ 30,865.00	100%	

Id.

C. LOCATION, DESCRIPTION AND USE OF THE SUBJECT PROPERTY

18. The subject property is located in Chicago, IL and situated adjacent to the main campus of the University of Chicago (the “University”). Stipulation ¶5.
19. The subject property is improved with a three-story residential facility that contains twelve residential rooms. Stipulation Group Ex. No. 1, Doc. B; Stipulation ¶5.
20. Each of the residential rooms accommodates between one and three inhabitants. *Id.*
21. Most of these rooms were rented to members of the Chapter throughout the 2000 tax year.⁴ However, at least one room was rented to a non-Fraternity member who attended the University during that time. Stipulation ¶¶22, 24.
22. Rental charges for rooms or individual portions thereof ranged from \$1,000.00 (\$90.91 per week/\$363.64 per month) to \$1,525.00 (\$138.64 per week/\$554.56 per month) per academic quarter. Stipulation ¶30.
23. Each academic quarter runs for eleven weeks. *Id.*
24. The building improvement also contains nine additional rooms, which were used for dining, study, recreation and storage spaces. *Id.*
25. No academic lectures, discussions or other University-related events were held at the subject property during any of the academic quarters of the 2000 assessment year. Stipulation ¶40.
26. Applicant’s predecessor in interest, The Illinois Beta House Fund, obtained ownership of the subject property on August 26, 1951. Stipulation Group Ex. No. 1, Doc. B.

4. The uses described in this and all subsequent Findings of Fact shall be understood to be uses that took place during the 2000 assessment year unless context clearly specifies otherwise.

27. The Illinois Beta House subsequently donated the subject property to the applicant as part of the transaction whereby its functions were consolidated into those of the applicant. Stipulation Group Ex. No. 1, Doc. B; Stipulation Ex. No. 3.

CONCLUSIONS OF LAW:

A. CONSTITUTIONAL AND STATUTORY PROVISIONS

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to its Constitutional mandate, the General Assembly enacted Section 15-35 of the Property Tax Code, (35 ILCS 200/1-1, *et. seq.*), which, in relevant part, exempts the following from real estate taxation:

All property donated by the United States for school⁵ purposes and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt [from real estate taxation], whether owned by a resident or non resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:

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5. The legal definition of the term “school” is, for property tax purposes, as follows:

A school, within the meaning of the Constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptance [sic] of the word.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 137 (1911).

(b) property *of* schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities for students and their spouses and children, staff housing facilities, and school-owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities, or other campus organizations.

(c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely.

(d) in counties with more than 200,000 inhabitants, which classify property, property (including interests in land and other facilities) on or adjacent to (even if separated by a public street, alley, sidewalk, parkway, or other public way) the grounds of a school, if that property is used by academic, research or professional society, institute, association or organization which serves the advancement of learning in a field or fields of study taught by the school and which property is not used with a view to profit. (emphasis added.)

35 ILCS 200/15-35.

Section 15-35 and other statutes exempting real estate from taxation are to be strictly construed, with all debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). The precise “debatable question” at issue in this case is whether this applicant, which, by its own admission,⁶ does not qualify as a “school” within the meaning of Section 15-35, is entitled to receive an exemption for real estate for property which it alleges is used for “school”-related purposes. For the following reasons, I conclude it is not.

6. See, Applicant’s reply brief, p. 1.

B. LACK OF EXEMPT OWNERSHIP

Illinois courts have long recognized that the “constitutional tax exemption for private educational institutions was intended to extend only to those private institutions which provide at least some substantial part of the educational training which otherwise would be furnished by publicly supported schools, academies, colleges and seminaries of learning and which, to some extent, thereby lessen the tax burden imposed upon our citizens as the result of the public educational system.” People ex rel Brenza v. Turnverein Lincoln, 8 Ill. 2d 188, 202-203 (1956). *See also*, People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911); People v. Trustees of Schools, 364 Ill. 131 (1936). The entity that qualifies as this type of “private educational institution,” the University of Chicago, is neither the applicant in this case nor the owner of the subject property.

The preposition "of," which appears in the first paragraph of Section 15-35 and Section 15-35(b), connotes that both provisions contain ownership requirements. Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968). Those requirements are very specific in that they pertain only to property owned by “schools.” 35 ILCS 200/15-35, 35(b). Applicant nonetheless argues that it need not satisfy this requirement because Section 15-35(c) provides for an exemption that is based strictly on use, and not ownership and use.

Applicant places great reliance on the Rule 23 order in Chicago Society of Alpha Delta Phi v. Illinois Department Of Revenue, Docket No. 98 I .5006 (1st Dist.

2000), in making this argument. This order does not constitute binding precedent under Supreme Court Rule 23(e), which states as follows:

Rule 23. Disposition of Cases in the Appellate Court

The decision of the Appellate Court may be expressed in one of the following forms: a full opinion, a concise written order, or a summary order conforming to the provisions of this rule. All dispositive opinions and orders shall contain the names of the judges who rendered the opinion or order. Only opinions of the court will be published.

(e) Effect of Orders. *An unpublished order of the court is not precedential and may not be cited by any party except to support contentions of double jeopardy, res judicata, collateral estoppel or law of the case.* When cited for these purposes, a copy of the order shall be furnished to all other counsel and the court. (emphasis added).

S. Ct. Rule 23(e).

Applicant is not raising any claims of double jeopardy, *res judicata*, or collateral estoppel in this case. Furthermore, the limited purpose of a Rule 23 order is to settle controversies between the immediate parties thereto. Administrative Order of the Illinois Supreme Court, Number MR 10343, issued June 27, 1994. (Heiple, J, supporting opinion). *Id.* Consequently, a Rule 23 order offers no precedential guidance as to the outcome of controversies that are between parties whose dispute is not the subject of the Rule 23 order in question. *Id.*

This is especially true in the exemption context, where “each individual claim for exemption must be determined from the facts presented.” Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968). Therefore, whatever law of the case value that the Rule 23 order in Chicago Society of Alpha Delta Phi may have is

limited to the particular facts and circumstances established by the record in that case.⁷

More importantly, the dissenting opinion of Presiding Justice Campbell exposes major concerns in the Chicago Society of Alpha Delta Phi court's determination. The court had reasoned that the property in question, a privately owned fraternity house, was entitled to exemption under Section 15-35 for two reasons. First, because the Society held lectures and other University-related programs at the subject property during the tax year in question, the primary use of that property was one that served as a mere adjunct for improving educational standards at the University of Chicago. Chicago Society of Alpha Delta Phi, *supra* at 8-9.

Second, although the Society derived income from the subject property by renting rooms therein to University students in exchange for rent, the Society applied whatever rental income it received to further the above "educational goals." *Id.* at 9. For this reason, the majority reasoned that the subject property was not "leased or otherwise used with a view to profit," in violation of Section 15-35. *Id.*

Presiding Justice Campbell disagreed with the majority's reasoning on several fronts. He first argued that because the Society was a fraternity, and not a literary society, it did not qualify as the type of "an academic, research or

7. There is at least one major difference between the facts and circumstances in Chicago Society of Alpha Delta Phi and the facts presented herein. I shall discuss this difference, which relates to lack of exempt use, *infra* at pp. 25-26.

professional society” whose property is subject to exemption under 35 ILCS 200/15-35(d).⁸ Chicago Society of Alpha Delta Phi, *supra* at 10 (Campbell, P.J. dissenting.).

He then argued that although 35 ILCS 200/15-35(c) does exempt properties used for “educational purposes,”⁹ the majority’s analysis, which focused on whether the property was “used with a view to profit,” failed to recognize that “it is the primary use of the property that governs and that the primary use of this property is to house university students.” Chicago Society of Alpha Delta Phi, *supra* at 10.

Presiding Justice Campbell then continued:

The taxpayer argues that the provision of student housing is an educational purpose, relying on subsection (b) of the statute, which exempts:

“property of schools used by the schools exclusively for school purposes, including ... school-owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities, or other campus organizations.”
35 ILCS 200/15-15-35(b) (West 1994).

8. 35 ILCS 200/15-35(d) provides for the exemption of properties situated:

(d) in counties with more than 200,000 inhabitants, which classify property, property (including interests in land and other facilities) on or adjacent to (even if separated by a public street, alley, sidewalk, parkway, or other public way) the grounds of a school, if that property is used by academic, research or professional society, institute, association or organization which serves the advancement of learning in a field or fields of study taught by the school and which property is not used with a view to profit.

35 ILCS 200/15-35(d).

9. 35 ILCS 200/15-35(c) provides for the exemption of:

(c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely.

35 ILCS 200/15-35(c).

The taxpayer argues that this language implies that the private operation of a fraternity house is an exempt school purpose under subsection (c). Where a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions. [citations omitted]. Had the legislature believed that private fraternity property should be exempt, it could have included it in the statute.

The taxpayer argues that making a distinction between privately-owned fraternity houses would be irrational and unconstitutional. Subsection (b)^[10] does not exempt school-owned fraternity houses; it exempts school-owned housing that may be occupied in whole or in part by fraternity members. Moreover, People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363, 58 N.E.2d 33 (1944), the leading case which the taxpayer and the majority cite in this regard, makes the distinction the taxpayer now attacks, referring to the “charge of the university for the teaching and education of its students in its buildings and under its authority. Goodman, 388 Ill. At 373, 585 N.E.2d at 38, quoting City of Chicago v. University of Chicago, 288 Ill. 605, 610, 81 N.E. 1138, 1139 (1907) (emphasis added). Nor is the distinction irrational. The taxpayer’s argument implies that any landlord renting to a student could claim that some portion of his property is being used for exempt school purposes. See Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill. 2d 263, 279, 664 N.E. 2d 52 60 (1996) (partial charitable exemption).

Our tax laws are to be construed strictly in favor of the taxation. Van’s Material Co. v. Department of Revenue, 131 Ill.2d 196, 216, 545 N.E.2d 695, 698 (1989). The majority decision ultimately gives no deference to the

10. 35 ILCS 200/15-35(b) provides for the exemption of:

- (b) property *of* schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities for students and their spouses and children, staff housing facilities, and school-owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities, or other campus organizations. (emphasis added).

35 ILCS 200/15-35(b).

Department's expertise in this area of the law, and reaches an absurd result.

Chicago Society of Alpha Delta Phi, *supra* at pp. 10-11. (Campbell, PJ dissenting) (emphasis and citations as they appear in the original; footnotes added).

The methodology and reasoning that Presiding Justice Campbell employed in his dissent has numerous applications to this case. First, Justice Campbell recognized that the reported, precedential cases have consistently drawn a distinction between: (a) properties that are owned by private interests but used for “school”-related or other exempt purposes (Wheaton College v. Department of Revenue, 155 Ill. App.3d 945, 947-948 (2nd Dist. 1987)); (Victory Christian Church v. Department of Revenue, 264 Ill. App.3d 919, 921-923 (1st Dist. 1988)); Swank v. Department of Revenue, 336 Ill. App.3d 553 (2nd Dist. 2003)); and, (b) properties that are *both* owned by duly qualified “schools” or other appropriate tax exempt interests *and* actually used for “school” or other tax-exempt purposes. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill.2d 363 (1944); Children’s Development Center, Inc. v. Olson, 52 Ill.2d 332, 336 (1972); Southern Illinois University Foundation et al. v. Booker, 98 Ill. App.3d 1062 (5th District, 1981).

Only those properties that are owned by “schools” or other qualified tax-exempt entities and actually used for “school”-related purposes have been held to be exempt from taxation in the reported decisions. *Compare*, Victory Christian Church v. Department of Revenue, *supra* (real estate owned by a private individual who leased the property to the appellant Church held non-exempt even though the Church used the property for unspecified religious purposes) with Children’s Development Center, Inc. v. Olson, *supra* (property owned by a religious order that leased the

property to a charitable institution that, in turn, used the leasehold for purposes that were conceded to qualify as “exclusively charitable” within the meaning of 35 ILCS 200/15-65 held exempt).

Furthermore, those reported decisions that have actually held in favor of exempting properties used for student housing have, without exception, involved properties that were actually or equitably owned by duly qualified “schools” or Universities. *Compare*, Wheaton College v. Department of Revenue, *supra* (real estate owned by private individuals who leased the property to the College held non-exempt even though the College used the property for student housing) with People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) (“Goodman”) (series of properties, including student dormitories, that the University of Illinois Foundation held in trust for the benefit of the University of Illinois held exempt); Southern Illinois University Foundation et al. v. Booker, 98 Ill. App.3d 1062 (5th Dist. 1981) (“Booker”) (student housing facilities that the Southern Illinois University Foundation held in trust for Southern Illinois University held exempt) and Knox College v. Illinois Department of Revenue, 169 Ill. App.3d 832, 835-838 (3rd Dist. 1988) (“Knox College”) (fraternity houses actually owned by Knox College held exempt even though Knox College leased the fraternity houses to private fraternities).

This case is more similar to Wheaton College than it is to Goodman, Booker and Knox College in that the entity that owns the subject property, the House Fund, is a privately-held interest that does not qualify as a “school.” The House Fund nevertheless cites Illini Media Company v. Department of Revenue, 279 Ill. App.3d

432 (4th Dist. 1996), in support of its argument that the subject property need not be owned by a duly qualified “school.”

The property at issue in Illini Media was owned by a not-for-profit multimedia corporation that used it to publish the campus newspaper distributed at the University of Illinois at Champaign, Urbana, as well as publish the campus year book and a technical journal. *Id.* at 433.

The University’s president incorporated the corporation in 1911. *Id.* Its corporate purposes included publishing and distributing student publications, educating students attending the University of Illinois at Champaign in the field of mass communications and operating other related student enterprises in the field of mass communications. *Id.*

All of the corporation’s activities were subject to the authority of the University’s chancellor. *Id.* at 434. Its board of directors consisted entirely of university students and faculty members, all of whom served without pay. *Id.* Although the corporation did have a few paid staff members, most of its work force consisted of over 700 students, all of whom were required to be enrolled at the University on a full-time basis. *Id.* The record in Illini Media also contained: (a) a ruling from the National Labor Relations Board “refusing to exercise its jurisdiction after concluding that the activities of Illini Media were so intimately connected with the university’s role of educating students as to be indistinguishable, and that any commercial activities of Illini Media were secondary to its educational function [*Id.*]” and, (b) testimony from the University’s vice-chancellor stating that “Illini

Media's activities were interrelated to the overall educational mission of the university and directed toward, and beneficial to, the student body.” *Id.*

This testimony, coupled with the other factors listed above, led the court to conclude that the headquarters building qualified for exemption under the then-applicable version of 35 ILCS 200/15-35¹¹ even though the University itself did not own the property. *Id.* at 437. The court was, however, careful to respond to the Department's concerns over lack of exempt ownership by adding the following caveat:

... the Department argues that adopting Illini Media's interpretation would require exemption for the property of “virtually any not-for-profit entity that gives students ‘hands on’ experience.” This argument is without merit. The Department failed to consider that the supreme court mandated considerations “of the particular factual situation[s] presented.” *Goodman*, 388 Ill. at 370, 58 N.E.2d at 37. It is not likely that just “any not-for-profit entity” would be subordinate to the Chancellor of the University of Illinois, employ over 700 students of the University of Illinois, governed by the students and faculty of the University of Illinois, have students in position [sic] of leadership of the enterprise, have a specific mission with respect to the students of the University of Illinois, maintain this mission for over 84 years since its incorporation and have other particular characteristics that make Illini Media unique. Under the “particular factual situation presented,” Illini Media clearly meets the requirements of Section 19.1.

Id.

This record fails to disclose that this applicant exhibits any of the “particular characteristics” of uniqueness necessary to qualify it as the type of entity whose property qualifies for exemption under the holding in Illini Media. First, nothing in the Stipulation or its supporting documentation proves that the University or any of

the University's senior officials retain direction and control over applicant's operations.

The capacity of a duly qualified "school" to exercise such direction and control was central to the court's analysis not only in Illini Media, but also in the Goodman and Booker cases, upon which the Illini Media court based much of its analysis. Thus, the analyses in these cases, which share the same set of operational facts, are highly instructive for present purposes.

In Goodman and Booker, two tax-exempt public universities (the University of Illinois in Goodman; Southern Illinois University in Booker) were subject to statutory debt limitations that made it legally impossible for them to incur whatever long-term financing was necessary to purchase the properties in question. Goodman, *supra*, at 366, 368; Booker, *supra*, at 1067. These prohibitions did not apply to the respective Foundations, which obtained appropriate financing for the acquisition of, and held legal title to, each of the properties. Goodman, *supra*, at 366, 368; Booker *supra*, at 1063, 1066.

The organizational documents of the Foundation in Goodman recited, *inter alia*, that it was authorized to "act without profit as trustee of educational or charitable trusts" for the benefit of the University of Illinois. Goodman, *supra*, at 366. Those of the Foundation in Booker expressly stated, *inter alia*, that it was: (a) "to buy, sell, lease, own, manage, convey and mortgage real estate;" (b) to act, "*in a manner specified by the Board of Trustees of Southern Illinois University*" as the

11. That version was found in Section 19.1 of the Revenue Act of 1939, (Ill. Rev. Stat. ch. 120, ¶19.1), a provision that, for present purposes, is substantially identical to the provisions of 35 ILCS 200/15-35 that apply herein.

business agent of that Board in respect to the acquisition, management and leasing real property and buildings; and, (c) to “do such other acts and undertake such other enterprises as in the judgment of the [Foundation’s] Board of Directors shall tend to promote the interests and welfare of Southern Illinois University.” Booker, *supra*, at 1064 (emphasis added).

The SIU Foundation’s by-laws further stated, in substance, that the president of Southern Illinois University, or his personal designee, was to sit on the Foundation’s governing board, as were a number of other directors personally appointed by the Chairman of the University’s Board of Trustees and other high-ranking University officials. *Id.* at 1064-1065.

Based on these provisions, the Goodman and Booker courts concluded that the respective universities exercised sufficient direction and control over the Foundations so as to place equitable ownership of the properties in question in the universities. Goodman, *supra*, at 366, 372, 375; Booker, *supra*, at 1071. The same, however, may not be said in this case for several reasons.

First, neither applicant’s Articles of Incorporation nor its by-laws contain any language expressly stating that the House Fund is to carry out its business under the direction, control or supervision of the University. *See*, Stipulation Ex. No. 3; Stipulation ¶10. Nor do such documents indicate that the University is entitled to exercise the types of control or direction over applicant’s operations that are inherent in a principal’s authority to direct the operations of its business agent. Booker, *supra*, at 1064. Indeed, the House Fund’s organizational documents are replete with references to the fact that its sole connection to the University is operating a

fraternity house, not for the benefit of the University itself, but rather, for the benefit of a separately-incorporated fraternity that happens to operate one of its chapters at the University. Stipulation Ex. No. 3; Stipulation ¶10.

In addition, the record in Booker contained a stipulation indicating that: (a) upon retirement of the mortgage, the Foundation would reconvey the properties in question to the University, which would continue to operate them as student housing facilities in the same manner as they had been prior to conveyance; and, (b) control and operation of the subject properties was, at all times, to remain under the jurisdiction of the University's Housing Office. Booker, *supra*, at 1067.

Once again, nothing in this record grants the University authority to actually operate the subject property under its own jurisdiction or the jurisdiction of any of its officials. Furthermore, neither the Stipulation nor any of its supporting documentation identify any condition precedent, such as the retirement of a mortgage, that requires the House Fund to convey the subject property to the University at any time.

Based on the above, I reject applicant's central contention in this case, which is that the subject property need not be owned by a duly qualified "school" in order to qualify for exemption under 35 ILCS 200/15-35 or any of its subsections. It is true that the entities that held title to the properties at issue in Illini Media, Goodman or Booker were not "schools." However, the "owner" of real estate for property tax purposes is not necessarily synonymous with the person or entity that holds legal title to the property. Booker, *supra*; People v. Chicago Title and Trust, *supra*. Rather, the "owner" is the person or entity that in practical terms: (a) exercises rights

of control over the property; and, (b) derives benefits therefrom. *Id*; Wheaton College, *supra*.

All of the entities that exercised these incidents of ownership in Illini Media, Goodman and Booker were tax-exempt, public universities. Accordingly, subjecting these properties to taxation would have had the undesired policy effect of requiring the State of Illinois,¹² which was the real party in interest in all of these cases, to delve into the public treasury to pay property taxes. *Accord*, United States v. Hynes, et al., 20 F.3d 1437 (7th Cir. 1994) (noting that the rationale for exempting property of a public taxing body is to prevent that body from being forced into the inconsistency of taxing itself in order to raise money to pay over to itself, which money could be raised only by taxation).

This clearly is not the case herein, because the subject property is legally and equitably owned by the House Fund, a private entity that the General Assembly did not intend to benefit through enactment of the statute under which it is presently seeking exemption. People ex rel Brenza v. Turnverein Lincoln, 8 Ill. 2d 188, 202-203 (1956). Consequently, exempting this particular subject property would have the undesired policy of effectively relieving that private entity of its otherwise legally valid obligation to pay property taxes without legal justification therefor.

This conclusion is consistent with the holdings in Wheaton College, *supra* and Swank v. Department of Revenue, 336 Ill. App.3d 851 (2nd Dist. 2003), at least to the extent that it prevents a non-exempt entity from reaping the economic rewards

12. Property of the State of Illinois is, unlike that at issue herein, exempt solely by virtue of the State's ownership interest therein. 35 ILCS 200/15-55. *See*

of tax savings that it is not entitled to receive. It also preserves the rules of construction that apply in all property tax cases, which require that exemption statutes be strictly construed in favor of taxation with all debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Thus, the Rule 23 order in Chicago Society of Alpha Delta Phi, *supra*, may create some debate as to what types of entities qualify as exempt owners for present purposes. However, the cases of precedence that the Illinois courts intend to be instructive and legally binding, as well as the rules of construction that apply in all property tax cases, leave no doubt that this class is limited to “schools” or, at minimum, to entities whose operations are effectively controlled by “schools.” Illini Media, *supra*; Goodman, *supra*; Wheaton College, *supra*; Knox College, *supra*. *Accord*, Association of American Medical Colleges v. Lorenz, 17 Ill.2d 125 (1959) (property owned by and used for the benefit of a consortium of duly accredited medical schools held exempt); Big Ten Conference, Inc. v. Department of Revenue, 312 Ill. App.3d 88 (1st Dist. 2000) (property owned by and used for the benefit of a sporting conference consisting entirely of tax-exempt universities held exempt). Because the House Fund is not a “school,” and a “school” does not exercise any manner of control over its operations, the House Fund does not qualify as an exempt owner for present purposes. Therefore, the portion of the Department’s determination which found that the subject property is not in exempt ownership should be affirmed.

also, Public Building Commission of Chicago v. Continental Illinois National Bank

C. LACK OF EXEMPT USE

With respect to lack of exempt use, it is first noted that, it is the Fraternity, and not the applicant House Fund, that is the actual, primary user of all of that facilities provided at the subject property. However, the Fraternity's status as an Ohio corporation provides it with a legal identity that is separate and distinct from that of the applicant House Fund. Furthermore, it is the House Fund, and *not* the Fraternity, that is the sole applicant herein. Therefore, the Fraternity's uses of the subject property cannot be ascribed to the House Fund.

Even if such uses could be ascribed to the applicant, there is at least one major difference between the uses found exempt in Chicago Society of Alpha Delta Phi and the uses at issue in this case. In Chicago Society of Alpha Delta, the subject property was used for University-related lectures relating to literature, politics and current events on no less than eight occasions during the tax year in question. Chicago Society of Alpha Delta Phi, *supra* at p. 4. Here, the parties have stipulated that *no* University-related lectures, seminars or other similar gatherings occurred at the subject property during the tax year currently in question, 2000. Stipulation ¶40.

Each tax year constitutes a separate cause of action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980). Consequently, the one and only state of affairs that is relevant to the outcome of this case is the one that took place during the 2000 assessment year, which ran from January 1, 2000 through December 31, 2000.¹³ Therefore, those parts of the Stipulation which indicate that applicant held lectures and other University-related

& Trust Company of Chicago, 30 Ill.2d 115 (1963).

gatherings at the subject property in tax years other than 2000¹⁴ are irrelevant both to the issue presented and to the ultimate outcome herein. For this reason, any purported similarities between the facts of Chicago Society of Alpha Delta Phi and the facts of this case are illusory at best.

Moreover, any purported similarities between the evidence concerning use in this case and the evidence presented in Illini Media are likewise illusory. The record in Illini Media contained testimony from the University's vice chancellor indicating that "Illini Media's activities were interrelated to the overall educational mission of the university and directed toward, and beneficial to, the student body." Illini Media, *supra* at 434.

This record does not contain the testimony or declaration of any official employed by the University. Instead, it contains only the self serving declarations of applicant's *own* president, R. Scott Morris (Deposition Ex. No. 7) and applicant's *own* treasurer, Matthew B. Stern (Deposition Ex. No. 8), as well as the deposition of the Fraternity's president, Michael Liberty (Stipulation Ex. No. 6) which is equally self serving.

Applicant offered the statements of these individuals as evidence that applicant's activities are beneficial to the University community as a whole. However, the fact that each of these individuals holds a position of trust either with the applicant or the Fraternity whose house it owns deprives each of their statements of the type of objectivity that one can ascribe to an otherwise impartial University official. For this reason, I conclude that the declarations of Messrs. Morris, Stern,

13. Section 1-155 of the Property Tax Code defines the term "year" for Property Tax purposes as meaning a calendar year. 35 ILCS 200/1-155.

and Liberty do not rise to the level of clear and convincing evidence that is necessary to sustain applicant's burden of proof. To conclude otherwise would relax the evidentiary standards in property tax cases to levels well below those required by state constitutional mandate and below those necessary to protect public treasuries from unwarranted lost revenue costs.

More importantly, analysis of applicant's federal return (Applicant Motion Ex. No. 3) proves that it is all but factually and legally impossible for applicant, itself, to use the subject property "exclusively" or primarily for any of the purposes necessary to sustain exemption under 35 ILCS 200/15-35. For instance, 99% of the total program service expenses shown on that return¹⁵ are related, in some way, to costs incurred by providing maintenance and other upkeep for the subject property. Furthermore the one program expense item that accounts for the remaining 1% of such expenses, "alumni awards," is clearly nothing more than a highly incidental fraction of applicant's total program expenses.

The expenses associated with providing such "alumni awards," which appear to be scholarships that the House Fund awards to Fraternity members, can reasonably be attributed to "school"-related uses. However, the word "exclusively," when used in Section 15-35 and other exemption statutes refers to the primary use of real estate, and not any incidental use or uses thereof. Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

14. See, e.g., Stipulation, ¶¶ 38, 38b, 38c.

15. I computed the 99% as follows:

1. \$1,790.00 (interest expense) + \$12,308.00 (depreciation expense)
+ \$2,324.00 (repair and maintenance expense) = \$16,422;
2. \$16,422.00/\$16,622.00 = 0.9870 (rounded) or 99%.

Here, the business and economic realities that govern applicant's capacity to distribute its limited financial resources among various uses effectively prohibit the House Fund from using the subject property primarily for any of the uses necessary to sustain exemption under 35 ILCS 200/15-35. Rather, they confine applicant's primary use of the subject property to that of a real estate management company.

If this were not the case, then applicant would not allocate: (a) fully 95% of its actual, cash program expenses; and, (b) nearly 70% of its actual total cash expenses to repairs, upkeep and other costs associated with property management. However, the following computations prove that this is indeed true:

PROPERTY MANAGEMENT EXPENSES AS A PERCENTAGE OF ACTUAL TOTAL CASH PROGRAM EXPENSES	
Factor	Computations
All Program Expenses: Interest Depreciation, Depletion, Etc. Repairs and Maintenance Alumni Awards Total Program Expenses	 \$ 1,790.00 \$12,308.00 \$ 2,324.00 <u>\$ 200.00</u> \$16,622.00
Non-Cash Program Expenses Depreciation-Related Expenses	 \$12,308.00
Total Program Expenses Less Non-Cash Program Expenses: Total Program Expenses Less Non-Cash Related Expenses Equals Actual Cash Program Expenses	 \$16,622.00 <u>-\$12,308.00</u> \$ 4,314.00
Actual Cash Program Expenses Less Actual Cash Program Expenses Unrelated to Property Management: Total Actual Cash Program Expenses Less Alumni Awards Equals Actual Cash Program Expenses Related to Property Management	 \$4,314.00 <u>-\$ 200.00</u> \$4,114.00
Percentage of Actual Cash Program Expenses Attributable to Property Management Equal To: Actual Cash Program Expenses Directly Attributable to Property Management Divided by Total Actual Cash Program Expenses Equals	 \$4,114.00 <u>/ \$4,314.00</u> .9536 (rounded) or 95%

PROPERTY MANAGEMENT EXPENSES AS A PERCENTAGE OF ACTUAL TOTAL CASH EXPENSES	
Factor	Computations
Total Management and General Expenses	\$14,243.00
Non-Cash Management and General Expenses Depreciation Related-Expenses	\$12,308.00
Total Cash Management and General Expenses Equal To: Total Management and General Expenses Less Depreciation-Related Expenses Equals	 \$14,243.00 <u>-\$12,308.00</u> \$ 1,935.00
Total Actual Cash Expenses Directly Attributable to Property Management Equal To: Total Cash Management Expenses Plus Total Actual Cash Program Expenses Attributable to Property Management Equals	 \$1,935.00 <u>+\$4,114.00</u> \$6,049.00
Percentage of Actual Cash Expenses Attributable to Property Management Equal To: Actual Cash Expenses Directly Attributable to Property Management Divided by Total Actual Cash Expenses Equals	 \$4,114.00 <u>/\$6,049.00</u> .6801 (rounded) or 68%

These computations demonstrate that applicant commits nearly all of its financial resources to costs associated with property management. However, applicant has only a finite amount of financial resources available for its disposal. Because applicant has already allocated virtually all of those resources to cover these property management costs, the business and economic realities under which it operates prohibit applicant from applying those same resources to cover the costs associated with any other uses. For this reason, it is all but factually impossible for applicant to apply anything but incidental portions of its resources to uses necessary to qualify the subject property for exemption under 35 ILCS 200/15-35.

Once again, such incidental uses are legally insufficient to satisfy the statutory exempt use requirement, which mandates that the subject property be

“exclusively” or primarily used for the narrow set of purposes articulated in Section 15-35. ILCS 200/15-35; Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). If it were otherwise, then public treasuries would be deprived of revenues that they would otherwise be lawfully entitled to receive simply because a private entity uses real estate for some purpose that is tangentially related to providing some type of education. However, Section 15-35 protects public treasuries from bearing such unwarranted lost revenue costs by restricting the class of exempt uses to those wherein the primary use is one that directly relieves governmental burdens with respect to education that the government itself is otherwise required to provide. Chicago & Northeast Illinois District Council of Carpenters v. Illinois Department of Revenue, 293 Ill. App.3d 600 (1st Dist. 1997), *leave to appeal denied*, April 1, 1998.

The above analysis demonstrates that the applicant, House Fund, itself, does not use the subject property primarily for purposes that relieve such governmental burdens because its primary use of the subject property is that of a real estate management company. Because the operations of such companies are inherently commercial, applicant’s use of the property was not primarily for exempt purposes in the first instance and with “a view to profit,” in violation of Section 15-35, in the second. Therefore, that portion of the Department’s determination which found that the subject property is not in exempt use should be affirmed.

D. FINAL CONSIDERATIONS

The holding in People ex. rel. Harding v. Omega Chapter of Psi Upsilon Fraternity, 335 Ill. 317 (1929), which applicant cites in support of its position, does not alter any of the above conclusions. There, the court held that the doctrine of *res judicata* precluded the county collector from collecting property taxes on a fraternity house that had been adjudged to be exempt from taxation in a previous year. 335 Ill. at 321. While the property at issue in Harding was a fraternity house, the Illinois courts have since ruled, without exception, that each tax year constitutes a separate cause of action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980); Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987). Therefore, the doctrine of *res judicata* does not apply in property tax cases, even if ownership and use remain unchanged. *Id.* However, even assuming *arguendo* that *res judicata* did apply, that doctrine cannot be invoked where, as here, the record does not contain a final administrative or judicial decree proving that subject property was in fact exempt from real estate taxation in one or more tax years prior to 2000. People v. Chas. Levy Circulating Company, 17 Ill.2d 168 (1959). Therefore, applicant's reliance on People ex. rel. Harding v. Omega Chapter of Psi Upsilon Fraternity is misplaced.

The same may be said of the House Fund's reliance on City of Chicago v. University of Chicago, 228 Ill. 605 (1907). There, the Illinois Supreme Court held that certain buildings situated on the main campus of the University of Chicago, that

the University itself owned in fee simple, fell within the provisions of a municipal ordinance that exempted certain properties of educational institutions from water taxes. *Id.* at 609-610.

The property at issue in this case is, once again, distinguishable from those at issue in the City of Chicago case in that the University, itself, does not own the subject property, in fee simple or otherwise. Therefore, the court's analysis, which focused on whether the properties were used: (a) in "the immediate conduct and carrying on" of the *University's* business and, (b) to produce revenue for the *University itself*, is absolutely inapplicable herein. *Id.* at 607-610.

WHEREFORE, for all the above-stated reasons, it is my recommendation that Cook County Parcel Index Number 20-14-116-006 not be exempt from 2000 real estate taxes.

Date: 1/14/2004

Alan I. Marcus
Administrative Law Judge